

REMARKS/ARGUMENTS

Election Requirement

The Examiner issued an election of species requirement in the present case. The Examiner has identified the claims of the present application as being directed to four patentably distinct species of the invention:

- Species I - referring to Figures 3a-3b; and
- Species II - referring to Figures 4a-5c.

In order to comply with 35 U.S.C. § 121, Applicants provisionally elect, with traverse, to prosecute Species II, which the Examiner associates with Figures 4a-5c. Applicants' election is made without prejudice. Applicants will be entitled to consideration of claims to additional species provided that all claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

Applicant respectfully disagrees with the present election of species requirement. More particularly, Applicant respectfully asserts that the embodiments of the present invention illustrated in Figures 3a-3b and 4a-5c may be properly examined in the same application in light of their similar characteristics. More specifically, both embodiments include a substantially conically-shaped and segmented needle portion connected at a larger diameter end to a hub. Both needles are designed to separate and expand upon insertion of a an additional device therein. The hub serves as an entryway into the needle and also functions to connect the needle to an additional device, such as an

evacuated collection tube, a hypodermic needle or a catheter needle. The hub may also facilitate handling of the needle by a user.

While the hub may be of somewhat different design and shape based on the particular device to which it will attach the needle, each hub will perform one or more of substantially the same functions mentioned above and described in the present application. That is, the hub will allow a portion of another device to be inserted therethrough and into the needle, the hub can facilitate handling of the needle by a user, and the hub may serve to connect the needle to another device (whether only briefly or for a longer period of time).

As such, Applicant respectfully submits that requiring the filing of separate applications for each of the multitude of different hub designs that would be necessary to connect to an equally numerous number of different devices that may be used with such a needle would be unduly burdensome. Further, based on the similarities between the embodiments shown, it is highly unlikely that the Examiner would be required to conduct a separate prior art search with respect to Species I and Species II. Therefore, Applicant respectfully requests that the Examiner withdraw the election requirement and that Species I and Species II be examined together in the present application.

Respectfully submitted,

Date: 7/10/2006

By: /Eric M. Gayan/

Eric M. Gayan
Attorney for Applicant

Response to Office Action of: June 09, 2006
Response Dated: June 10, 2006
Title: Expandable Penetrating Needle And Method Of Use

App. No.: 10/614,667
Inventor: Victor Katz
Examiner: Cris L. Rodriguez

Registration No. 46,103
Standley Law Group LLP
495 Metro Place South
Suite 210
Dublin, Ohio 43017-5319
Telephone: (614) 792-5555
Facsimile: (614) 792-5536
E-mail: egayan@standleyllp.com